[2024] JMCA Civ 31

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA

PARISH COURT CIVIL APPEAL NO COA2021PCCV00032

BETWEEN	**JESSICA EDWARDS**	**1st APPELLANT**
AND	**LIVINGSTON EDWARDS**	**2nd APPELLANT**
AND	**KATHLEEN BROWN**	**RESPONDENT**

Donald Gittens instructed by Miss Apryl July of July Law for the appellants

Ravil Golding instructed by Lyn Cook, Golding & Co for the respondent

19, 20 October 2022 and 15 July 2024

Civil Procedure – Parish Court – Plaint lodged by agent in own name on behalf of principal – Agent purporting to act under a power of attorney – Power of attorney not properly proved, recorded or registered at the time plaint lodged – Whether power of attorney valid – Whether proceedings were validly commenced – Effect of failure to prove, record or register the power of attorney on the validity of the plaint and the subsequent trial – Principal substituted for agent as plaintiff before evidence taken – Whether substitution cured any procedural defect – Probate of Deeds Act s 6 – Registration of Titles Act, ss149 and 151 – Judicature (Parish Court) Act, ss 143, 138, 188 – Judicature (Parish Court) Rules, Order III, Order V, Rules 2, 3, and 6, Order VI, Rules 4 and 9, Order VII, Order XI, Order XXXVI, Rules 1 and 23, Civil Procedure Rules, Part 22

Civil Procedure – Recovery of Possession – Defence of adverse possession – Whether bona fide dispute as to title raised – Whether necessary for evidence of annual value of property to be led where annual value stated – Whether jurisdiction of the parish court ousted – Limitation of Actions Act ss 3 and 30

– Judicature (Parish Court) Act ss 89 and 96 – Judicature (Parish Court) Rules, Order VI, Rule 4

BROOKS P

[1] I have read, in draft, the judgment of my learned sister, Edwards JA. I agree with her reasoning and conclusion.

EDWARDS JA

Introduction and background

[2] This is an appeal brought by Jessica Edwards and Livingston Edwards ('the appellants') against the decision of a Judge of the Parish Court for the Parish of Saint Elizabeth, made on 17 September 2019. Kathleen Brown ('the respondent') had brought an action against the appellants for recovery of possession of land and the Judge of the Parish Court gave judgment in her favour, ordering the appellants to vacate the premises on or before 31 December 2019, with costs to the respondent.

[3] The action was commenced by the filing of a plaint by Shirley Brown, the brother of the respondent, acting as agent for the respondent. The plaint identified the plaintiff as "Shirley Brown (agent for Kathleen Brown)". Shirley Brown purported to derive his authority or agency on behalf of the respondent from a power of attorney dated 6 August 2012. The power of attorney was duly executed by the respondent and notarized on that day by a notary public and commissioner of deeds. The notary's certificate indicated that his commission would expire in 2013. That fully executed power of attorney was in existence at the time the plaint was lodged. However, it had not, at the time of filing, been registered or recorded at the Island Records Office, nor at the Registrar of Titles Office. The same power of attorney was re-notarized and filed in the Saint Elizabeth Parish Court on 9 May 2018, long after the case went to trial. It appears from the endorsement at the back of the power of attorney that it was, by then, recorded and registered from 20 September 2017, and from the arguments in this court, it seems to have been generally accepted that this was so.

[4] At the start of trial of the plaint, an amendment was sought, orally, by counsel for the respondent, and granted by the Judge of the Parish Court, over the objections of opposing counsel, to change the name of the plaintiff in the plaint to "Kathleen Brown", thus substituting Kathleen Brown for Shirley Brown as the proper plaintiff to the plaint. The action continued to judgment with Kathleen Brown as the plaintiff.

[5] Notwithstanding this amendment, curiously, the appeal was filed with the name of Shirley Brown as the respondent. At the hearing of the appeal, however, this court determined that it would treat Kathleen Brown as being the proper respondent.

The proceedings in the Parish Court and the Judge of the Parish Court's reasons for decision

[6] The basis of the respondent's claim in the Parish Court, was that the appellants had been in wrongful or illegal occupation of land at Vauxhall, in the parish of Saint Elizabeth, that was owned by her. The land forms part of all that parcel land comprised in certificate of title registered at Volume 1069 Folio 163 of the Register Book of Titles, and was described as being lot 16. It was claimed that the land had been purchased for the respondent by her brother, Excel Brown (who by the time of the action was deceased), on 15 October 1999, the respondent having sent him the purchase price of US$35,000.00. By plaint lodged 17 December 2012, the respondent sought recovery of possession of the land from the 1st appellant, pursuant to section 89 of the then Judicature (Resident Magistrates) Court Act, claiming that the 1st appellant occupied the land without any right or title. The plaint also stated that the gross annual value of the property did not exceed the sum of $30,000.00.

[7] For the record, at the time the claim was filed in 2012, the Parish Courts were then known as the Resident Magistrates Courts and the judges who presided in those courts were termed Resident Magistrates. Those nomenclatures were changed by an Act of Parliament, effective 15 February 2016. By the time the matter was heard and determined, the change to the new nomenclatures of Parish Court and Judges of the

Parish Court, was fully in effect. These, therefore, are the nomenclatures that will be used in this judgment.

[8] Although the plaint was initially lodged solely against the 1st appellant, Jessica Edwards, permission was later given, upon an application made by the defence, for Livingston Edwards to be added as a defendant. The appellants filed a special defence on 10 May 2013, asserting, in essence, that the respondent's claim was barred by the Statute of Limitation, and that, the respondent's title, if any, had been extinguished by virtue of adverse possession on the part of the appellants. At the start of the trial, the appellants stated their defence in the same vein, asserting that they had been in peaceful uninterrupted possession of the portion of land they had occupied for upwards of 25 years, and that the title of the previous owners had been extinguished. Although the defence was filed on behalf of both appellants, the 1st appellant took no further part in the proceedings.

[9] The trial commenced on 15 March 2017 with the respondent present. The Judge of the Parish Court heard evidence over two years, on several dates, from 17 March 2017 to 17 September 2019. The respondent gave evidence and called witnesses in support of her claim. The 2nd appellant also gave evidence and called witnesses in support of his case.

[10] In her written judgment, before coming to her decision, the Judge of the Parish Court summarized the evidence and considered the list of exhibits tendered into evidence before her. She then considered the law applicable to the case. She determined that there were three issues raised in the case. The first was whether the plaintiff did, in fact, purchase the property in 1999, and whether the land was vested in her. The second, was whether at the time of purchase, the appellants had already been in exclusive possession of the property for 12 years or more. The third, was the effect of the statement of annual value, absent any evidence as to the annual value. The Judge of the Parish Court also considered the question as to who bore the burden of proof in the case, and concluded

that, where there was a defence of adverse possession, the respondent had the burden of proof, as the plaintiff, to show that her title had not been extinguished.

[11] The Judge of the Parish Court made several findings of fact. She accepted the evidence that the land had been purchased on behalf of the respondent using the funds that the respondent had provided to her brother. The Judge of the Parish Court also accepted the evidence of the respondent's brother's widow, that her husband had, indeed, purchased the property for the respondent. She accepted, as unchallenged, the evidence that the widow, as administratrix of her husband's estate, had executed a document of conveyance to the respondent. This was necessary because the receipt for the land was made out in the name of the brother, although the respondent had provided the purchase price. She accepted that after the purchase the respondent had asserted her ownership but found that the conveyance done by the respondent's brother's widow did not confer a paper title, but was recognition and confirmation of the appellant's ownership of the land. The Judge of the Parish Court accepted that the respondent had a receipt that referred to a "lot 16", and "lot 16", which she said, was confirmed by the land surveyor as the land that had been purchased from the previous owner Mr Shakespeare. She found, therefore, that the respondent had an equitable interest in the land.

[12] The Judge of the Parish Court also found that the respondent's brother was never in possession of the land, but that, after the purchase, the respondent had, by her actions and those of her agents, which included her husband, entered into possession, and had remained in possession of the property. She found that the respondent's husband, along with two other persons, with the appellant's permission, did enter upon the land and exercised acts of possession over the land immediately after the purchase, including clearing and farming it. This evidence, the Judge of the Parish Court found, had not been challenged by the appellants but instead was supported by that of the 2nd appellant, who admitted that the respondent's agents had come onto the land in 1999. He also admitted that two of the respondent's agents farmed the land from 2000.

[13] In her assessment of the witnesses, the Judge of the Parish Court found the respondent to be a truthful witness and that she had not been discredited under cross-examination. She also accepted the respondent's evidence that she had carried out certain renovations on what was the helper's quarters on the land, had given permission to one of her agents to live there and to have water supplied to the land, and that she had paid the property taxes for the entire property. The Judge of the Parish Court accepted the respondent's evidence that she had not only purchased the property but had also entered into possession of it.

[14] The Judge of the Parish Court, therefore, resolved her first issue with a finding that the appellant owned the land in question and that the property was vested in her.

[15] The Judge of the Parish Court considered that 13 years had passed between the time the purchase was made in 1999 and the lodging of the plaint in 2012. This fact raised several questions which the Judge of the Parish Court identified and attempted to resolve. The first question she tried to resolve was whether Mr Shakespeare's title (the title being registered to SV Shakespeare Enterprises Limited, the respondent's predecessor in title, of whom Mr Shakespeare was the principal) had been extinguished by the appellants. In making her determination, the Judge of the Parish Court found portions of the 2nd appellant's evidence to be inconsistent and untruthful. She found that the 2nd appellant had begun occupying the land with his father, who had received permission to be on the land. She found that the evidence of the 2nd appellant was in conflict with the evidence of his witnesses as to when he had started occupying the land in his own right, and that their evidence was, therefore, unreliable. She accepted that the 2nd appellant had begun occupying the land in his own right as an adult in the 1980s, and that that occupation was also with the permission of the respondent's predecessor in title, until 1999.

[16] The Judge of the Parish Court found that the 2nd appellant had accepted that someone else owned the land, even though he said he thought it was Revere's land (referring to Revere Jamaica Alumina Limited) or government land. She found that his

evidence that he thought Mr Shakespeare was a caretaker meant that he must have been caretaking on someone's behalf. She also considered the 2nd appellant's admission that he had received water and electricity on the land with the assistance of Mr Shakespeare in the 1990s. She found, from the evidence, that the 2nd appellant was on the land with the permission of Mr Shakespeare. She, therefore, found that the appellants' occupation of the land had been with the permission of the respondent's predecessor in title. Having found the latter, the Judge of the Parish Court found that that fact permitted occupation, and that that occupation, therefore, could not have been adverse.

[17] The Judge of the Parish Court found that Mr Shakespeare was not dispossessed of his title because the appellants had occupied the land as licensees, so that when the respondent bought the land, Mr Shakespeare was still able to pass all his title in the subject land to her. The respondent's purchase, she found, was made three years after Mr Shakespeare had given permission to the 2nd appellant to get utilities on the premises.

[18] The Judge of the Parish Court took the view that time would have begun to run against the respondent after 1999, after she had taken possession, but found, however, that based on the evidence, the 2nd appellant could not state with any confidence or accuracy that he was in sole exclusive and undisturbed possession after 1999. The Judge of the Parish Court found that the respondent, although 13 years had passed, had been in possession and had not been dispossessed by the appellants, and so there was no adverse possession. The Judge of the Parish Court found that the appellants had not been in possession of all the land, as the respondent was the one in possession, and that the appellants had only used the fenced off area and once used a bathroom 30 to 40 feet away from it. The Judge of the Parish Court found, ultimately, that after the respondent had purchased the property in 1999, she had asserted her rights to ownership and was in possession of the land, notwithstanding the appellants' occupation of part of the land. She went on, therefore, to find that the respondent's title had not been extinguished by the appellants' continued occupation, and resolved the second issue in the respondent's favour.

[19] As regards what she considered to be the third issue to be resolved, the Judge of the Parish Court found that the claim fell squarely within section 89, and that the annual value was irrelevant. In this regard, she relied on the case of **Melvin Clarke v Lenive Mullings-Clarke** [2016] JMCA Civ 60, to find that evidence of the annual value would only be required if an issue of title was raised based on section 96 of the Act. She found that the statement of annual value in the particulars was in conformity with Order VI, Rule 4 of the Parish Court Rules ('the Rules'), and that the absence of evidence as to the annual value was, therefore, not fatal.

[20] The Judge of the Parish Court considered that, although the 1st appellant had been served, she had not appeared at the trial. Based on her findings, the Judge of the Parish Court awarded judgment to the respondent against both appellants.

The appeal

[21] The notice of appeal was filed on 23 September 2019, and grounds of appeal were filed on 31 January 2020. At the hearing of the appeal, Mr Donald Gittens, for the appellant, sought permission to argue amended and supplemental grounds of appeal filed on 19 October 2022, as follows:

> "1. The action was filed by Shirley Brown as agent for Kathleen Brown, as Plaintiff, in 2012, but the Power of Attorney appointing Shirley Brown as agent was signed by Kathleen Brown in New York, in 2017, five (5) years after the case had commenced.
>
> 1A. The Power of Attorney that was used to commence the Plaint was invalid and defective and incapable of competently commencing the Plaint, in that (1) it was executed subsequent to the filing of the Plaint and (2) it did not comply with the legal requirements for recording in Jamaica, whereby as a consequence, the said Power of Attorney, by its invalidity, rendered the filing of Plaint similarly invalid, and void ab initio.
>
> 2. Title was in issue in this case. Therefore evidence of the gross annual value of the property should have been given by the plaintiff for the Resident Magistrate to have jurisdiction to determine the case, and no such evidence was given.

2A. The Plaint was filed in breach of Order VI Rule 4 of the Judicature (Parish Court) Rules (as they are now) and remained in that breach up to the judgment on the Plaint, and the learned Parish Judge was by reason of that breach deprived of jurisdiction, and embarked upon the case ultra vires.

3. The learned Parish Judge (as she was by then) found that the entry of the Defendants'/Appellants' father was not trespassory, as he was given permission by the owner, C. Edwards, and she concluded from that finding that the Defendants'/Appellants' [sic] could not be adverse possessors, as the initial entry was with consent. However, there is no evidence to suggest that when the Defendants'/Appellants' [sic] took possession of the land subject of the plaint, anyone consented to the entry as the property was then owned by Revere Aluminium Company and the consent of C. Edwards given to the Defendants'/Appellants' father could not extend to the Defendants/Appellants.

4. The land which is the subject matter of the claim, and which the Defendants/Appellants are occupying, has not been identified as the land purchased by Excel Brown for the Plaintiff/Respondent, Kathleen Brown. The receipt for the land purchased for Kathleen Brown describes it as Lot 4. The surveyor, who was called as a witness by the Plaintiff, did not identify the land as Lot 4, nor did he state that the land was part of a sub-division or scheme and from all available evidence, including the survey diagram tendered in evidence, the subject property is a green-field being part of a much larger acreage and not a lot in a sub-division.

4A. The identification of the parcel of land that was in dispute failed to attain the standard of prima facie evidence required to establish the vital elements of property, parties and price, and apart from the fact of this failure being fatal in and of itself, this failure would have also irredeemably and fatally affected the determination of the annual value for the purposes of jurisdiction had Order VI been complied with, in the face of a clear and vigorous dispute as to ownership and title." (Emphasis as in original)

The issues

[22] In my view, the following issues arise for determination, based on the amended and supplemental grounds of appeal:

1. whether the power of attorney used to commence the plaint was invalid and defective, thereby rendering the plaint invalid and void *ab initio* and so incapable of commencing the plaint (grounds 1 and 1A);

2. whether the Judge of the Parish Court had jurisdiction to hear the plaint where there was a dispute as to title but no evidence of the annual value of the property (grounds 2 and 2A);

3. whether the Judge of the Parish Court erred in finding that the appellants could not have been adverse possessors as their initial entry had been with consent (ground 3); and

4. whether the land was sufficiently identified as the respondent's land (grounds 4 and 4A).

Issue 1 - whether the power of attorney used to commence the plaint was invalid and defective, thereby rendering the plaint invalid and void *ab initio* and so incapable of commencing the plaint (grounds 1 and 1A)

The submissions

[23] In relation to this issue, counsel for the appellants, Mr Gittens, submitted that the plaint was defective, voidable, and arguably *void ab initio*, since at the time it was filed, there was no valid power of attorney in place, as required by sections 149 and 150 of the Registration of Titles Act ('RTA'), giving Shirley Brown the authority to act. The filing of a lawsuit in respect of registered land, it was submitted, was 'a manner of dealing with the land other than transferring it' as set out in those sections, for which a valid power of attorney was required. Further, he said, the document was required to be registered with the Registrar of Titles in accordance with the RTA, and at the Island Records Office, as per the Record of Deeds, Wills and Letters Patent Act, the Probate of Deeds Act, and the

Conveyancing Act, in order to be valid. The appellants relied on the case of **Chrysler (UK) Ltd v Robinson & Co Ltd** (1977) 15 JLR 105, and sought to distinguish the case of **Wyllie & Ors v West & Ors** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 120/2007, judgment delivered 30 July 2009.

[24] It was submitted that the later tendering of the power of attorney into evidence did not ratify the commencement of the plaint, nor did it empower the continuation thereof, and that the Judge of the Parish Court should have established that the power of attorney had been registered before embarking on the hearing. The case of **Loren Edwards (Pursuant to a Power of Attorney) v Ann Marie Vaciana** [2019] JMSC Civ 76 was relied on.

[25] Although counsel for the respondent, Mr Ravil Golding, conceded that as at the first date on which the power of attorney was executed before a Commissioner of Deeds (6 August 2012), the document did not meet the requirements of the Probate of Deeds Act and may not have been recordable under the Record of Deeds, Wills and Letters Patent Act, as well as the Conveyancing Act, it was at all material times an authorization in writing that empowered Shirley Brown to bring the action on behalf of the respondent. Further, it was submitted, the action was ratified/adopted by the respondent when she obtained the order of the Court at trial substituting her name for that of Shirley Brown as the plaintiff. No appeal was filed against that order.

Discussion and disposal of issue 1

[26] Judges of the Parish Court have no inherent jurisdiction (subject only to their role as guardians from abuse of process of the courts) and their jurisdiction is purely derived from statute. It is against that broad understanding, that this appeal must be determined. If counsel for the appellant's contentions are correct, then taken to its ultimate conclusion, the filing of the plaint, the commencement of the trial and the trial itself would be a nullity. For the reasons that I will give, I am not of the view that the defects in the power of attorney complained of, have that effect.

[27] Civil matters (the category in which recovery of possession of property claims falls) brought in the Parish Courts, are commenced by way of a plaint. The procedure is governed by the Judicature (Parish Courts) Act ('the Act') and the Rules. In considering this issue, it is necessary to make a distinction between the mere lodging of a plaint in the Parish Court and the lodging of the plaint in the name of the agent on behalf of his principal.

[28] Section 143 of the Act states that actions are to be commenced by the lodging of a plaint. The section reads in part:

> "**All actions and suits in a Court which, if brought in the Supreme Court, would be commenced by writ of summons, shall be commenced by the party desirous of bringing such action, or some person on his behalf, lodging with the Clerk or Deputy Clerk or any Assistant Clerk, at the office of the Clerk of the Courts, or at any Court held within the parish, a plaint**, stating briefly the names and last known places of abode of the parties, and naming a post office to which notices may be addressed to the plaintiff (to be called the plaintiff's address for service), and setting forth the nature of the claim made, or of the relief or remedy required in the action, in such short form as may be prescribed…; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, if the person or place be therein described so as to be commonly known." (Emphasis added)

[29] On the face of it, this section appears to allow the plaint to be lodged by any person on behalf of a plaintiff, without the requirement of any formal authorization. It simply involves taking a properly filled out plaint to the relevant court office and lodging it with the relevant officer. It seems to me that, on the mere face of this section, the would-be plaintiff could ask his or her neighbour, or any bearer, to lodge the plaint and that lodgement would validly commence the action. The fact that the lodgement is not personally made by the claimant or his attorney, does not in and of itself, invalidate the plaint.

[30] Under ordinary laws of agency, where a person does an act on another's behalf, such as lodging a document at the court's office, that person, if requested to do so, acts as an agent. A relationship of agency can arise informally. It is not always necessary to create one in writing or by a deed. Agency can be created orally, in writing, by conduct, by necessity, and of course, by deed. In the case of an action filed in the Parish Court, where formal authorization is required, the Rules usually state that it must be done by an agent "authorized by the law" (see for example Order XXXVI, Rule 1), or any person duly "authorized" to act.

[31] The only limitation on the lodgement of the plaint by a party other than the person desirous of bringing the claim (that is the plaintiff), as stated in section 143, is to be found in Order V, Rule 2. Order V, Rule 2 provides, *inter alia*, that if the plaint is lodged by a solicitor he shall state his name and place of business. Order V, Rule 6 provides that where the plaint is to be lodged in a court at a parish where the plaintiff does not reside, he may, instead of attending in person or by an agent, send it by post.

[32] In my view, therefore, no power of attorney or any other "authorization by law" is required to lodge a plaint on behalf of anyone. Counsel cited the case of **Loren Edwards** in which the plaintiff sued by way of a power of attorney, but that case was of no assistance as no issue arose with the validity of the power of attorney in that case.

[33] Nevertheless, if proof of agency is required for the mere lodgement of a plaint, the power of attorney in this case, as it stood in December 2012, would have provided sufficient proof that the person who lodged the plaint had the authority to do so. That is a completely different thing from saying that the power of attorney was valid for other purposes or that it could have been relied on by the Judge of the Parish Court to proceed to judgment in favour of the plaintiff "Shirley Brown (agent for Kathleen Brown)" under that power of attorney. I do not think any precedent is required for that simple common sense view. In this case, the lodging of a plaint was not required to be done by deed. Therefore, the certification of the notaries' commission, and the registration and recording

of the power of attorney were not required for the simple act of lodging the plaint. The plaint, therefore, was properly filed and the action was properly commenced.

[34] The complaint that the power of attorney was not in proper format the time the plaint was lodged is a valid complaint, as, notwithstanding that the power of attorney was executed and sealed before a notary public on 6 August 2012 in the United States of America, and the endorsement stated that the notary public was duly commissioned, there was no certificate, demonstrating that fact, annexed to it, as required by section 6 of the Probate of Deeds Act and section 152 of the RTA.

[35] Under section 2 of the Probate of Deeds Act, a deed includes a power or letter of attorney.

[36] Section 6 of the Probate of Deeds Act states that:

> "From and after the twenty-first day of April, 1886, deeds executed in any country outside the limits of this Island may be proved on the oath or affirmation of any subscribing witness thereto, or be acknowledged by any party or parties thereto, before any Notary Public or person exercising the functions of a Notary Public in such country; and every deed so proved or acknowledged in any such country shall be deemed to be sufficiently proved or acknowledged, provided that such probate or acknowledgement purports to be certified under the hand and seal of such Notary Public, and provided that where any deed purports to have been proved or acknowledged before any Notary Public in any foreign state or country there be annexed to such deed a certificate, under the hand and seal of the appropriate officer of such foreign state or country, to the effect that the person before whom such deed is so proved is a Notary Public duly commissioned and practising in such foreign state or country, or some portion thereof, and that full faith and credit can be given to his acts."

[37] Section 152 of the RTA carries a proviso to the same effect as section 6 of the Probate of Deeds Act, in requiring a certificate to be annexed to the power of attorney. The certification is required so that "full faith and credit" can be given to the actions of

the notary public. Therefore, without such certification, neither the Registrar of Titles acting under the provisions of the RTA nor the Judge of the Parish Court could rely on a power of attorney which does not carry such a certification, as "full faith and credit" could not be given to the actions of the notary public in witnessing the power of attorney.

[38] The plaint was lodged in December 2012 without said certification annexed, several months before the commission was to expire in October 2013. Up until the time of the expiry of the commission of the notary public, in 2013, the power of attorney did not carry the required certification, and was not registered at the Island Records Office nor was it lodged with the Registrar of Titles. The power of attorney was, therefore, not properly proved or acknowledged at the time of the lodgement of the plaint, although, in other respects, it complied with section 152 of the RTA which sets out the form of attestation of a power of attorney executed in any Foreign State or Country other than Britain and the rest of the Commonwealth. It also conformed with the requirements of section 11 of the Probate of Deeds Act. That Act does not require registration of the power of attorney.

[39] The same power of attorney was re-notarized on 12 July 2017 before a different notary public, with the seal of commission attached, and with the proper certification annexed. That commission expired on 12 May 2018. The power of attorney, in its proper form, was only filed in the Parish Court on 9 May 2018. Section 2 of the Record of Deeds, Wills and Letters Patent Act provides that a deed, made in due form of law and recorded at the Record's Office within three months of its execution, shall be valid to pass freehold. By virtue of section 4, the record becomes sufficient evidence of title claimed under the deed. Section 6 provides that all deeds executed within the island for any lands, tenements or hereditaments shall be recorded within 90 days, otherwise they will be void against all *bona fide* purchasers or mortgagees for value who have recorded their deeds within time. Section 8 provides that all deeds and conveyances executed outside of the island shall be recorded within 12 months of execution and ninety days after arrival in the island, otherwise they will be void against *bona fide* purchasers and mortgagees for

value. The Record of Deeds, Wills and Letters Patent Act thereby, provides its own sanctions for not recording the deed.

[40] In my view, it was not necessary for this power of attorney to be recorded under the Record of Deeds, Wills and Letters Patent Act for the purpose of filing a claim for recovery of possession.

[41] Section 188 of the Act provides for who may appear and act for a party to any proceeding in the Parish Court. It states as follows:

> "It shall not be lawful for any person, except the party to a suit or other proceeding, or a member of his family, or his clerk or servant, or his master, or any officer or clerk of a company or corporation duly authorized under the seal of such company or corporation, or an admitted solicitor, being the solicitor generally in the action for such party, or a barrister or advocate retained by or on behalf of such party, to appear and act for such party in such suit or proceeding; but an appearance by any such person shall be deemed to be an appearance of the party for whom he acts…"

[42] It is clear, therefore, that any of the above persons listed are authorised by this section to appear and act for a plaintiff in a suit or other proceeding in the Parish Court. Shirley Brown is the brother of the respondent and, by virtue of section 188, he was lawfully authorized to appear and act for the respondent. In the case of such a member of the family of the plaintiff, it seems to me no power of attorney would be required for Shirley Brown to appear and act for the respondent in any suit.

[43] The only reservation to this permissive is to be found in Order V, Rules 2 and 3, of the Rules which state, in part, in so far as it is relevant, that:

> "2…
>
> If the plaint is lodged by a Solicitor he shall state therein his name and place of business.
>
> 3—If the plaintiff sues or the defendant or any of them is sued, in a representative capacity, it shall be stated in the

> plaint lodged by the plaintiff, in what capacity the plaintiff sues or the defendant is sued."

[44] Complications would arise, however, from the fact of who is named as a plaintiff in the plaint. So in this case, the fact that the plaint was lodged by Shirley Brown is of no moment, for, as I have said, no power of attorney was necessary for him to do so. What, to my mind, complicates the issue is the fact that Shirley Brown was named as the plaintiff, acting as agent for the respondent. His authority to act as the plaintiff, which is separate from his authority to lodge the plaint, was purported to be derived from the power of attorney, which at the time of the lodgement of the plaint, was not properly proved, acknowledged and registered, in accordance with the law.

[45] Order XXXVI provides that where by these Rules any act may be done by any party, it may be done either in person or by his solicitor or by an agent authorized by law. In this case, Shirley Brown did purport to act as plaintiff for the respondent, not by virtue of any rule, but by virtue of section 188 of the Act. He was authorised to do so by the respondent under the power of attorney granted to him to recover possession of the respondent's real property. In such a case, the power of attorney would have to comply with the relevant laws governing the execution, recording and registration of such deeds for that purpose. Section 6 of the Probate of Deeds Act requires a certification to be annexed. There was no compliance with this requirement.

[46] Counsel for the appellant maintains that the power of attorney was also not in compliance with the requirements of section 149 of the RTA. Section 149 states that:

> "The proprietor (including a married woman) of any land under the operation of this Act, or of any lease, mortgage or charge, may appoint any person to act for him in transferring the same, or otherwise dealing therewith, by signing a power of attorney in the Form or to the effect contained in the Sixteenth Schedule.
>
> Every such power or a duplicate or attested copy thereof, shall be deposited with the Registrar, who shall note the effect thereof in a book to be kept for the purpose."

[47] The questions that arise from these legal requirements are whether the agency to act for the plaintiff to recover possession was unauthorized because the power of attorney authorizing the agent to do so was not properly proved, recorded nor registered with the Registrar of Titles, and, as a, corollary if the agency was unauthorized in the beginning, could it be later ratified. A further question is whether the substitution of the respondent as the proper party cured any defect in the unauthorized party being before the court at the commencement of the plaint.

[48] Whilst I do not accept that the failure to record the power of attorney caused it to be void for all purposes, as the reasons for recording and the sanctions for failing to record are stated in the provisions, I do agree with counsel for the appellants that it needed to be properly proved and acknowledged as a deed in the form stipulated by section 6 of the Probate of Deeds Act. However, I cannot agree with counsel that it was also required to be registered under the RTA for the action to commence. The respondent was the equitable owner in possession seeking recovery of possession against a squatter, and was not the registered owner of the land under the RTA. As such she could not transfer the land under the RTA as she had no registered title. Her action as an equitable owner in possession, to recover possession from a squatter, did not involve any "dealing" with the land that would have affected the registration of the title or that would have required any action on the part of the Registrar of Titles. Section 149 would, therefore, not be applicable, and there would be no requirement to register that power with the Registrar of Titles under section 149.

[49] A similar position was taken in the case of **Chrysler (UK) Ltd v Robinson & Co Ltd,** which was cited by the respondent, and which dealt with the validity and effectiveness of a power of attorney which had not been recorded at the Island Records Office. In that case, an agent of the appellant sought to terminate a distribution agreement with the respondent, purporting to act under a power of attorney which had not been recorded in the Island Records Office. The objection was taken that it was

invalid because it had not been recorded as required by section 51 of the Conveyancing Act.

[50] This court considered whether section 51 of the Conveyancing Act applied to all powers of attorney, or if the section was limited to powers of attorney involving the execution of conveyances. It also considered what the consequences would be if the section did apply to all powers of attorney. Section 51 of the Conveyancing Act states:

> "An instrument creating a power of attorney must be duly proved and recorded in the Record Office. The recording of such instrument shall be necessary for its completion, and no person whose rights depend upon an exercise of the power shall be required to recognize the existence of such power until the same is so duly recorded."

[51] This court, having considered the powers granted to the donee under the power of attorney in question, as well as the provision of section 51, concluded that the section applies to powers of attorney which authorize acts that can only be done by deed. The court also held that if the power contemplated under a power of attorney does not require a deed for it to be effective, such a power would not be affected by section 51. Consequentially, the court found that the non-recording of the power does not invalidate it for all purposes. Under the section, it said, the failure to record suspends the effectiveness of the power, and the person whose rights are affected by it can choose to recognize the power or not. This court took the view that the power of attorney in question could be validly exercised other than by deed, and was therefore, not such a power as is required to be recorded under section 51. It was also held that where a power of attorney is one to which section 51 applies and it has not been recorded, the persons permitted to refuse to recognise it, were those whose rights flow or arise out of the exercise of that power.

[52] This court further found that persons whose rights "depend" on the power are only those persons whose rights flow from or arise out of the exercise of that power, and that, the word "depend" in section 51 does not mean the same thing as "to be affected by it",

which, the court said, is a far wider concept that would give the word an unnatural meaning.

[53] As pointed out in **Chrysler (UK) Ltd v Robinson & Co Ltd**, therefore, the non-recording of a power of attorney does not, *ipso facto*, make it ineffectual for all purposes, and depends on whether the act to be carried out under the power of attorney is required to be done by deed. In a similar vein, the fact that the power of attorney was not registered under section 149 of the RTA is of no moment, as the land was not being dealt with in a manner which would require the Registrar of Titles to take any action.

[54] Counsel for the respondent argued that the power of attorney, though irregular and unregistered, still served as authorization in writing giving Shirley Brown the power to bring an action on behalf of the respondent, and that the action was ratified by the respondent when she sought and obtained permission to be substituted as the plaintiff. I have already shown that no power of attorney was required to lodge the plaint which commenced the action. I have also shown that ordinarily, by virtue of section 188 of the Act, no power of attorney is required for a family member to appear and act on behalf of a plaintiff. Since no steps were being taken under the RTA, with regard to the land, section 149 of that Act was inapplicable.

[55] As said previously, as the power of attorney was not necessary for Shirley Brown to lodge the plaint and commence the action, its only purpose would have been to serve as authorisation, by the respondent, for Shirley Brown to bring the claim, as plaintiff, on her behalf. However, in so far as Shirley Brown purported to have been acting under the power of attorney executed in 2012 to bring the claim as plaintiff, acting as agent for the respondent, he could not have lawfully obtained judgment, pursuant to that power of attorney, as it was irregular in form. Nonetheless, I do not agree with counsel for the appellants that the respondent could not ratify the actions of her agent, if ratification was necessary. Nor do I agree that the respondent could not properly substitute herself as the plaintiff, for once the plaint was validly commenced, any plaintiff could be added, removed or substituted. Furthermore, in my view, when the respondent, at the start of

the trial, applied to be substituted as the plaintiff, the irregularity in the certification of the power of attorney would have become moot, as it would no longer have been a document that was necessary for the case to proceed.

[56] In **Causwell v The General Legal Council (*ex parte* Elizabeth Hartley** [2019] UKPC 9, the Privy Council examined the issue of the validity of proceedings under the Legal Profession Act ('LPA') commenced by an unauthorized agent, and whether those proceedings could subsequently be ratified. Citing **Brook v Hook** (1871) LR 6 Exch 89 at 96, the Board made it clear that where there was a lack of authority in the commencement of a civil action, that lack of authority could be made good by ratification, once there was nothing in the relevant legislation that expressly or impliedly prohibited ratification. The authorities on that issue, it said, were settled, and the starting point would be that the lack of authority could be cured by ratification. The Board accepted that the lack of authority, in that case, could be cured by ratification, since there was nothing in the LPA that expressly or impliedly prohibited it.

[57] In my view, in the instant case, there is nothing in section 143 of the Act that expressly or impliedly prohibits ratification. Therefore, even if the plaint was commenced in the name of Shirley Brown acting for the respondent under an irregular power of attorney, his action would have been ratified by the respondent by her substitution as the plaintiff, before the trial began.

[58] Taking the argument one step further, I would draw attention to section 138 of the Act, which provides that, subject to the foregoing provisions in the Act, all provisions as to parties which are applicable to the Supreme Court shall apply equally to the Parish Courts. This would include the power to add, remove or substitute parties to a plaint. The provisions of the Civil Procedure Code (since replaced by the Civil Procedure Rules 2002 ('CPR')) relating to the parties are set forth in Appendix D to the Rules.

[59] Order III of the Rules also provides that the provisions as to parties applicable to the Supreme Court, by virtue of provisions in the Act, apply equally to the Parish Court.

Also by virtue of Order III, a Judge of the Parish court has the power to add persons as plaintiffs or defendants, in certain circumstances.

[60] Order XIII of the Rules also gives the Judge of the Parish Court the power to make substitutions and amendments as follows:

> "ORDER XIII
>
> AMENDMENT
>
> 1— Where a person other than the defendant appears at the trial and admits that he is the person whom the plaintiff intended to charge, or ought to have charged, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the action shall proceed in all respects as if such person had been originally named in the summons, and the costs of the person originally named as the defendant shall be in the discretion of the Judge.
>
> 2. Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the Judge may at the instance of either party, on such terms as he shall think fit, amend the proceedings accordingly, and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the summons.
>
> 3. Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the Judge may at the instance of either party, on such terms as he shall think fit, amend the proceedings accordingly, and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the plaint.
>
> 4. Where the name or description of a plaintiff in a summons is insufficient or incorrect, it may be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made.

> 5. Where the name or description of a defendant in a summons is insufficient or incorrect, it may be amended at the instance of either party by order of the Judge, or by the Judge in the exercise of his own discretion on such terms as he shall think fit, and thereupon the action shall proceed in all respects, as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description, the action may proceed, and in the Judgment, and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner.
>
> …
>
> 8. Any application under any of the Rules of this Order may be made to the Judge before or at the trial."

[61] Furthermore, not every defect in procedure in the Parish Court makes the proceedings invalid. Some defects are mere irregularities which can be either ignored or cured. For example, a plaintiff is allowed to sue by his solicitor. Order VI, Rule 9 requires, in such a case, that the particulars of claim be signed by the solicitor. Order VI, Rule 9 states as follows:

> "9—Where a plaintiff sues by Solicitor, the particulars must be signed by the Solicitor in his own name or that of his firm, and he shall state thereon
>
> (a) His place of business
>
> (b) Where he will accept service of proceedings in the action or matter on behalf of the plaintiff
>
> (c) The amount of Solicitor's costs incurred by the plaintiff up to the time of lodging the plaint, otherwise the costs of lodging the plaint by Solicitor shall not be allowed.
>
> If in the opinion of the Court the particulars are insufficient the costs of lodging the plaint by Solicitor shall not be allowed unless the Court otherwise orders."

[62] The solicitor is, therefore, required to state the solicitor's costs up to the time of lodgement, or else he will not be allowed to recover the costs. In **MM Alexander v**

Stephen Rickets (1968) 11 JLR 112, this court held that section 143 of the Act did not require the particulars of claim to be signed by the solicitor at the time of lodgement as required by Order VI, Rule 9 of the Rules, so that the proceedings had been validly commenced even though that rule had not been complied with. The failure to sign was held to be an irregularity that merely breached Order VI, Rule 9, the remedy for which lay in the sanction provided in the rule to deprive the solicitor of his costs.

[63] Finally, Order XXXVI, Rule 23 provides that non-compliance with any of the rules does not automatically render the proceedings void. It provides:

> "23. Non-compliance with any of these Rules or with any Rule of Practice for the time being in force shall not render any proceedings void unless the Court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court shall think fit."

[64] Part 22 of the CPR provides miscellaneous rules relating to parties. Rule 22.1 provides that "any person may begin, defend or carry on proceedings in person or by an attorney-at-law" subject to the provisions of Parts 22 and 23 dealing with minors and patients. This rule is more restrictive than the provisions of the Act, so that the provisions in the Act regarding who can bring and lodge a plaint, would apply.

[65] Part 21 of the CPR deals with representative parties. Representative parties under rule 21.1 of the CPR refers to circumstances where five or more persons have the same or similar interest in the proceedings and one or more of them, or a body, is appointed to represent all or some of them in the action. Neither the respondent in this case, nor Shirley Brown purported to be acting as a representative plaintiff.

[66] Part 19 of the CPR deals with the addition and substitution of parties after proceedings have commenced. Rule 19.2 provides for a change of party generally, and gives the court the power to add or substitute a new party in certain circumstances. Rule 19.2(3) gives the court the power to add a new party to the proceedings without an application being made, if it is desirable to do so, or for any of the other reasons set out

in rule 19.2(3)(a) or (b). By virtue of rule 19.2(4), the court "may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings". By virtue of rule 19.2(5)(a) and (b), the court may order the substitution of a party, if the existing party's interest or liability has passed to the new party, or if the court is better able to resolve the matters in dispute by the substitution. Rule 19.3(1) provides that the court can substitute, add, or remove a party without an application. If an application for permission to add, substitute or remove a party is made because the interest or liability of the existing party has passed to the new party (rule 19.2(5)(a), a certain procedure must be followed as set out in rule 19.3(3).

[67] In this case, by virtue of section 138 of the Act, the provisions in the CPR would become relevant. The application for substitution could not have been made under rule 19.2(5), as no interest nor liability was passing from Shirley Brown to the respondent, therefore rule 19.3(3) would not apply, instead the relevant rule would be rule 19.3(1). Therefore, it seems to me that where, at the commencement of the trial, the Judge of the Parish Court made the order substituting the respondent for Shirley Brown, she acted within the law and it was within her discretion to do so. Having done so, the trial would have validly proceeded with the respondent duly substituted as the plaintiff in her own right.

[68] It is important to point out, also, that rule 8.4 of the CPR provides the general rule that a claim will not fail because a person was added as a party to the proceedings who should not have been added, or because a person who should have been made a party was not made a party to the proceedings.

[69] In this case, Shirley Brown, being in a category authorised by the Act to lodge a plaint and appear and act on behalf of his sister, the respondent, any irregularity caused by the failure to properly prove and acknowledge the power of attorney by certification annexed, did not affect the validity of the plaint and the commencement of the suit.

[70] The plaint was validly lodged and validly commenced by the respondent's brother, acting as her agent. No power of attorney was required for this action to be taken. Thereafter, that action by Shirley Brown was ratified by the respondent and she was properly substituted as the plaintiff, in her own right, at the start of the trial of the plaint.

[71] The grounds of appeal challenging the decision of the Judge of the Parish Court, in this regard, are, therefore, without merit.

Issue 2 - Whether the learned judge had jurisdiction to hear the plaint where there was a dispute as to title but no evidence of the annual value of the property (grounds 2 and 2A)

The submissions

[72] Counsel for the appellants submitted that the Judge of the Parish Court was "deprived of jurisdiction and delivered judgment *ultra vires*", because the matter was one that involved a dispute as to title and which required evidence to be established of the annual value of the property. It was submitted that there was no such evidence, and, therefore, the court's jurisdiction was ousted. Counsel argued that, although the matter was filed pursuant to section 89 of the Act, when the respondent filed a special defence relying on adverse possession and led evidence in support of it, the claim was no longer one under the provisions of section 89, but became a section 96 claim which then required evidence of annual value to be led. The mere statement as to the annual value was not enough, it was asserted. Counsel relied on the principles expounded in the following cases: **Danny McNamee v Shields Enterprises Ltd** [2010] JMCA Civ 37; **Donald Cunningham and Others v Howard Berry and Others** [2012] JMCA Civ 34; **Heather Rodney and Ertha Scott v Audrey Dawn (also known as Tiffany Scott) Pringle and Another** [2016] JMCA App 9; **Shawn Marie Smith v Winston Pinnock** [2016] JMCA Civ 37; **Melvin Clarke v Lenive Mullings-Clarke** [2016] JMCA Civ 60; **Solomon v Smith** [2017] JMCA Civ 9; **Claude Jenine (Duly appointed Attorney of Vernis Parchment, owner of land part of Hopewell, in the parish of St Elizabeth) v Cynthia Blair** [2018] JMCA Civ 31; **Beverley Simms and anor v Lionel Johnson** [2019] JMCA Civ 19; **Norma Pringle v Aldyth Morgan** [2019] JMCA Civ 36. Although

consideration was given to all the authorities cited by counsel, I will refer only to those I found useful in the determination of the issues in this case.

[73] Counsel for the respondent, however, asserted that the annual value of the property was irrelevant, in the circumstances of the case, as title was not in issue, since, as the Judge of the Parish Court found, the 2nd appellant was merely a licensee. The respondent pointed out that on the 2nd appellant's own admission, it was Mr Shakespeare, the previous owner, who had given him documents allowing him to obtain electricity and water at the premises in his own name. He was, therefore, on the property as a licensee without any legal estate or interest in the property. Counsel submitted that the respondent was the owner in possession and was entitled to enforce her rights as owner and recover possession.

[74] It was argued that the Judge of the Parish Court was required to hear evidence to determine whether there was credible material that challenged the respondent's title, and simply raising a defence that purported to raise such an issue was not sufficient to oust the jurisdiction of the Parish Court. There was no credible evidence in this case, it was submitted, that called into question the respondent's title. The case of **Ivan Brown v Perris Bailey** (1974) 12 JLR 1338 was relied on in support of these submissions.

[75] Counsel submitted that the appellants were mere licensees, and although the licence was a bare licence, and could have been revoked at any time by Mr Shakespeare, given the length of time the appellants had been carrying on their business there (a shop, bag juice factory and bakery), they would have been entitled to a reasonable period in which to vacate the premises. Since there was no formal termination of the licence, counsel submitted that the earliest point at which it could be said the licence was terminated would have been when the survey was conducted with Mr Shakespeare's participation. The sale itself, it was said, would not have terminated the licence because it did not transfer all of Mr Shakespeare's interest in the relevant portion of the property. Counsel also submitted that the licence would also have likely been terminated upon Mr Shakespeare's death in May 2010.

[76] Although counsel relied on **Terunnanse v Terunnanse** [1968] 1 All ER 651, at pg. 656C, **Minister of Health v Bellotti and Another** [1944] 1 KB 298 and **Millenium Productions Ltd v Winter Garden Theatre (London) Ltd** [1946] 1 All ER 678, as well as on the learned editors of Cheshire and Burns at page 500, and Megarry & Wade in the Law of Real Property, 5th ed, at page 800, all dealing with the revocation of licences and the length of notice required, they were not very helpful in deciding any of the issues in this case.

Discussion and disposal of issue 2

(i) The Law

[77] By their claim that they had been in possession of the disputed property for over 25 years, and had thereby extinguished the title of the respondent, the appellants relied on sections 3 and 30 of the Limitation of Actions Act ('the Limitation Act'). Section 3 provides in part:

> "No person shall make an entry, or bring an action… to recover any land…but within twelve years next after the time at which the right to make such entry, or to bring such action…shall have first accrued…"

[78] Section 4 provides, in part:

> "The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say-
>
> (a) when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received…"

[79] Section 30 provides:

> "At the determination of the period limited by this Part to any person for making an entry, or bringing any action… the right and title of such person to the land…for the recovery whereof such entry, action or suit…might have been made or brought within such period, shall be extinguished."

[80] Dr Lloyd Barnett in his article The Land Registration System and Possessory Titles – Jamaican Perspective (1998) WILJ 72 (cited with approval by the Privy Council in the case of **Recreational Holdings 1 (Jamaica) Ltd v Lazarus** [2016] UKPC 22, at para. 31), in explaining the effect of the provisions, said as follows:

> "On the effluxion of the statutory periods, the Limitation Act expressly extinguishes the title of the owner who has been out of possession and implicitly confers a good and legal title on the adverse possessor. Since he can no longer be ejected by the former owner whether he was registered or not or by any third party he acquires a right *in rem*."

[81] The effect of the limitation provisions is that the person in possession for the requisite period, having extinguished the title of the paper owner out of possession, himself acquires a possessory title which is an absolute legal estate in fee simple, good against all the world, including the paper title owner. To do so however, the so-called squatter must have been in open, undisturbed and exclusive possession of the disputed land for the requisite period.

[82] Since any action to recover possession of land is barred by the Limitation Act after 12 years, the question in this case is whether the appellants were in exclusive undisturbed possession of all that parcel of land sought to be recovered, for that time, prior to the date of the lodgement of the plaint by the respondent. Since the respondent bought the land from her predecessor in title, there would have to have been evidence, either that the respondent's predecessor in title was dispossessed by the appellants, or either one of them before the sale, or, that the respondent herself was dispossessed prior to her action for recovery of possession. If the respondent's predecessor in title was

dispossessed by both or one of the appellants before the sale, then he would have had no valid title to pass to the respondent. If there was credible evidence on which the court could act, pointing to that probability, then the jurisdiction of the court would be ousted unless there was evidence that the annual value of the property was below the monetary jurisdictional limit of the court.

[83] Despite the provisions in the Limitation Act, the law is that an occupier in possession with the consent of the owner, cannot dispossess the paper owner's title. Neither can a tenant, lessor, or a person in occupation under some other commercial arrangement.

[84] The House of Lords in **JA Pye (Oxford) Ltd and another v Graham and another** [2002] UKHL 30, sought to explain the operation of similar provisions in the English Limitation Act. In attempting to explain the meaning of the terms possession, dispossession, ouster, and adverse possession, which appear in the case law but which are not defined in the statutes, the House of Lords relied on the judgment of Slade J in the case of **Powell v McFarlane** (1977) 38 P & CR 452 (as cited in **Pye**). In that case, Slade J considered that the term possession in law bore the traditional meaning of that "degree of occupation or physical control, coupled with the requisite intention, commonly referred to as *animus possidendi*, that would entitle a person to maintain an action of trespass in relation to the relevant land". With regard to dispossession, Slade J said he would regard that as meaning "the taking of possession in such sense from another without the other's license or consent". The House of Lords agreed with these definitions. For its part, it considered that there would be "a 'dispossession' of the paper owner in any case where…a squatter assumes possession in the ordinary sense of the word." Possession by a single squatter must be single and exclusive. A squatter cannot be in joint possession with the paper owner. As explained by Slade J, in **Powell v McFarlane**, at pages 470-471 (as quoted in **Pye**):

> "Factual possession signifies an appropriate degree of physical control. It must be single and [exclusive] possession, though there can be a single possession exercised by or on

> behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed…Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

[85] With this statement of the law, the House of Lords, in **Pye**, agreed.

[86] The term adverse possession is not defined in the Limitation Act but is conveniently used to describe the possession by a squatter within the statutory period without license or consent of the paper owner. The House of Lords, in **Pye**, identified the sole question in such a case as simply whether "the [d]efendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner".

[87] According to Slade J in **Powell v McFarlane**, for the law to attribute possession of land to the squatter, he must be in factual possession with the requisite intention to possess. The House of Lords explained this to mean that there are two elements to the legal possession: (a) a sufficient degree of physical custody and control, and (b) an intention to exercise custody and control over the land for one's own benefit on one's own behalf. There must, therefore, be evidence of actual possession, as well as an intention to possess. The House of Lords stated that, without the requisite intention to possess, there can be no possession. The intention that is required is "the intent to exercise exclusive control over the thing for one self". In other words, it is an intention to occupy and use the land as one's own. The paper owner is entitled to adduce evidence which points to the contrary.

[88] Slade J, at page 472 said:

> "If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite *animus possidendi* and consequently as not having dispossessed the owner."

[89] Then, at page 476, he said:

> "In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite *animus possidendi* in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself betoken an intention on his part to claim the land as his own and exclude the true owner."

[90] Sections 89 and 96 of the Act govern applications for recovery of possession in the Parish Court. Section 89 states:

> "When any person shall be in possession of any lands or tenements without any title thereto from the Crown, or from any reputed owner, or any right of possession, prescriptive or otherwise, the person legally or equitably entitled to the said lands or tenements may lodge a plaint in the Court for the recovery of the same and thereupon a summons shall issue to such first mentioned person; and if the defendant shall not, at the same time named in the summons, show good cause to the contrary, then on proof of his still neglecting or refusing to deliver up possession of the premises, and on proof of the title of the plaintiff, and of the service of the summons, if the defendant shall not appear thereto, the Magistrate may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or on or before such day as the Magistrate shall think fit to name; and if such land be not given up, the Clerk of the Courts, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorizing and requiring the Bailiff of the court to give possession of such premises to the plaintiff."

[91] Section 96 states:

> "Whenever a dispute shall arise respecting the title to land or tenements, possessory or otherwise, the annual value whereof does not exceed [the monetary jurisdiction of the court at the time of the plaint], any person claiming to be legally or equitably entitled to the possession thereof, may lodge a plaint in the Court, setting forth the nature and extent of his claim…and if the defendant or the defendants, or either of them, shall not, on a day to be named in such summons, show cause to the contrary, then, on proof of the plaintiff's title and of the service of the summons on the defendant or the defendants, as the case may be, the Magistrate may order that possession of the lands said plaint be given to the plaintiff…"

[92] Where a claim for recovery of possession is made under section 89 of the Act, there is no dispute as to title and the jurisdiction of the court is not restricted by the monetary value of the land. Where there is a dispute as to title, by virtue of the provisions of section 96, the annual value of the land must be within the monetary jurisdiction of the Parish Court for the Judge of the Parish Court to have jurisdiction to determine the matter. At the time of the lodgement of this plaint the monetary jurisdiction of the court was $75,000.00.

[93] The plaint in this case stated the annual value of the property in keeping with Order VI, Rule 4, which states that:

> "4 — In all actions for the recovery of land the particulars shall contain a full description of the property sought to be recovered, and of the annual value thereof, and of the rent, if there be any, fixed or paid in respect thereof."

[94] Order VI Rule 4 requires the statement of annual value in all cases involving recovery of land, regardless of whether there is a dispute as to title or not. The respondent sought to recover possession of her property under section 89 from someone

she considered to be in possession without title, or right of possession, and accordingly stated the annual value as not exceeding $30,000.00.

[95] It is against the background of these principles and legislative provisions that the Judge of the Parish Court was required to examine so much of the case in order to determine whether what was before her involved any dispute as to the title of the paper owner. A mere statement as to the defence which shows an intention to set up a claim of adverse possession was not sufficient. The case law is supportive of this.

[96] The case of **Ivan Brown v Perris Bailey** (1974) 12 JLR 1339 (later followed by this court in **James Williams v Hylton Sinclair** (1976) 14 JLR 172 and several cases since then) dealt decisively with the issue regarding when a dispute as to title can be said to arise in order to oust the jurisdiction of the court. The facts of that case are not important, in my view, but what is instructive is what was held. This court said, at page 1341 of the judgment in that case, that:

> "[I]n order to exclude the jurisdiction of the … court there must be placed before that court credible evidence which is demonstrably capable of calling into question the title to the subject matter of the action. When once the court was so persuaded it ceased to have jurisdiction."

[97] In rejecting the earlier notion which had been accepted by the former Court of Appeal in the case of **Francis v Allen** (1957) 7 JLR 100 (CA), that a *bona fide* intention to set up a claim of title was sufficient to oust the jurisdiction of the court, this court, having examined a number of earlier authorities on the subject, and the circumstances of the case that were before the magistrate, said this, at page 1343:

> "All the authorities show with unmistakable clarity that the true test is not merely a matter of a *bona fide* intention, but rather whether the evidence before the court, or the state of the pleadings, is of such a nature as to call in question the title, valid and recognisable in law or in equity, of someone to the subject matter in dispute. If there is no such evidence the *bona fides* of a defendant's intention is quite irrelevant."

[98] Further, on that same page, the court said of the case under consideration:

> "[A] question of title would have arisen if, but only if, there had been adduced before the magistrate a credible narrative of events *probably* pointing to the existence in the appellant's favour of an equitable interest, albeit not registered. In that situation, and assuming further that the annual value of the land was in excess of $200, it is clear that the magistrate would have been obliged to acknowledge the absence of jurisdiction."

[99] This decision was approved and followed in **Danny McNamee v Shields Enterprises Ltd.** In that case, Morrison JA (as he then was) decided that there was sufficient indication on the pleadings that the appellant/defendant was seeking to raise a *bona fide* dispute as to title, in circumstances where he had filed a detailed written statement of defence alleging, among other things, that the title through which the respondent/plaintiff was claiming had been obtained by fraud. Morrison JA opined that, even if the pleadings had been insufficient to allow for such a determination, it was incumbent on the magistrate to hear evidence to that effect, before deciding whether she had jurisdiction, in the absence of evidence of the annual value. In that case, the annual value had not been stated, and there was no indication that the value of the property did not exceed the statutory limit of the court.

[100] In cases where the party seeking to recover possession of property is relying on a registered title to do so and there is no question that that title has been extinguished by operation of any statute of limitation, then no dispute as to title can be said to arise in the case, unless there is a credible narrative of events pointing to the probable existence in the other party of an equitable interest, even if it is one that is not registered. In such a case, the plaint would fall to be decided under section 89, and evidence of the annual value would not be crucial to the court's jurisdiction to adjudicate the matter.

[101] Where the case involves competing claims to possession, this court said, in **Harold Francis Jnr and another v Dorrett Graham** [2017] JMCA Civ 39, at para. [93], that;

> "In this case, there are two competing claims to possession. Both parties could not possess the same land and even if both were in actual possession up to the time of the filing of the plaint what was said by Maule J in **Jones v Chapman** (1849) 2 Exch 80, all those years ago, would still be applicable. In that case, Maule J in discussing the legal position where a person without title persist in occupying land alongside one who is entitled to immediate possession by virtue of his title said at page 821:
>
> > 'As soon as a person is entitled to possession and enters in assertion of that possession…the law immediately vests the actual possession in the person who has so entered. If there are two persons in a field, each asserting that the field is his, and each doing some act in assertion of the right of possession, and if the question is which of those two is in actual possession, I answer, the person who has title is in actual possession and the other person is a trespasser.'"

(ii) Did the evidence before the judge of the Parish Court show that there was a dispute as to title?

[102] The evidence before the Judge of the Parish Court showed that the property in dispute was bought by the respondent's brother on behalf of the respondent, but the brother took the receipt in his own name. No transfer of title was made by the vendor, Mr Shakespeare to the respondent. The respondent, thereby, held an equitable interest in the property. After her brother's death, his widow, as administratrix of her husband's estate, executed a common law conveyance of the property to the respondent.

[103] One would have to agree with the Judge of the Parish Court that, although the conveyance could not transfer title in the property, as the property was registered under the RTA, it did serve as recognition that, in 1999, the respondent became, through the purchase of the property by her brother on her behalf, the equitable owner, of the subject property. The evidence which the Judge of the Parish Court heard, and accepted as true, was that, after the purchase in 1999, the respondent, through her agents, including her

husband, entered upon the land and took possession of it. It was over three and a half acres of land. The land was cultivated by the respondent's husband and her two licensees, Geoffrey Montague and Jeffrey Brown. Between them, they planted plantains, bananas, oranges, june plums, sugar cane, and cash crops on the land. Jeffrey Brown lived in the servant's quarters which had been renovated by the respondent.

[104] The respondent's land had buildings on it, including an old servant's quarters, a washroom, a utility room, and a guard house. These buildings were there from the time off Revere's ownership. The respondent made improvements to the washroom and the servant's quarters. She also caused the land to be surveyed in 2005. The 2nd appellant admitted to all of this.

[105] When the respondent entered the land and took possession of it, the 2nd appellant was on a portion of it described as an enclosed area, approximately two squares, near to the guardhouse, at the entrance to the property. It was enclosed using old metal sheeting. At that spot, the appellants operated a business. There is no dispute that the appellants were in occupation of that enclosed area. The respondent denied that the appellants had ever occupied any other portion of the land. On the respondent's case, Mr Shakespeare had given the 2nd appellant notice to leave in 2001. The respondent also gave instructions for her brother to "get him off" but he did not. The respondent said she had asked the 2nd appellant to pay rent but he did not do so. This was denied by the 2nd appellant.

[106] The evidence, which the Judge of the Parish Court accepted, pointed overwhelmingly to the conclusion that the appellants occupied only that enclosed section of the land and nowhere else. Admittedly, on the 2nd appellant's own evidence, he enclosed this small area because on it were his businesses, consisting of a bakery and restaurant. It had started out as a shop and expanded to these two enterprises. His evidence was that it was enclosed for security purposes.

[107] The further evidence, which the Judge of the Parish Court accepted as true, is that, up to 1996, and as late as 1999, when the property was sold, the 2nd appellant was on the land, at that enclosed area, with the permission of Mr Shakespeare, being the principal of SV Shakespeare Limited, the registered owner at the time. The appellants were unable to mount any credible dispute of this fact.

[108] There was evidence that the property was once owned by Uriah Hanson who was subsequently relocated by Revere when the company became the owner of the land. The appellant's father, Mr C Edwards, operated a garage on the land with the permission of Uriah Hanson, in the vicinity of the area that the appellants now occupy, and thereafter Mr C Edwards stopped operating there and worked from his home. He never lived on the property, and in fact, no member of the Edwards family ever lived on the property, even though Mr C Edwards had 12 children. It was not resolved at trial what period Mr C Edwards spent on the land, but according to parts of the evidence, it was three to four years, and according to the 2nd appellant, it was in the 1970s. Although the 2nd appellant claimed his father planted on the property and raised animals, there is no evidence as to what became of those crops or animals when his father left.

[109] The 2nd appellant's evidence was that, in the 1970's, when he was a school boy, his father had occupied all the land and operated a garage. He would go on the land after school. His father farmed all the land and gained ownership by adverse possession. In the 1980s, he said, he went on the land and began operating a garage at the same spot as his father. At that time, his father was no longer on the land. After he began operating a shop there in the 1980s, he enclosed two squares near the guardroom where the shop was, as persons had broken into the shop. At the time, he operated the shop alone. He built two wooden structures on it which were used as a bag juice factory and a bakery, operated by the 1st appellant. He claimed to occupy all the land, the shop being on one half acre, the garage on three quarters of an acre. Nobody had interfered with them on all the land, and interference only began when the case came to court, he said. It is clear,

as the Judge of the Parish Court found, that the 2nd appellant's evidence in this regard was inconsistent and not credible.

[110] The 2nd appellant's father died in 2007. I have taken note that his father passed away before Mr Shakespeare, and after the respondent's purchase, without the 2nd appellant or his father having made any claim to the land. None of the appellants' older siblings made any claim to any portion of the land. There was some evidence that the appellants' older brother did operate a garage at the same spot where their father had done so before, but that brother died soon thereafter. There was also evidence that an older sister had also operated a shop at the same spot as the 2nd appellant's shop, for a short period of time. None of these individuals claimed any right to the land whilst Mr Shakespeare was alive. The 2nd appellant himself bought land in Santa Cruz and is building his home there.

[111] The 2nd appellant maintained that he did not know that Mr Shakespeare owned the land part of which he was occupying. At the same time, he also maintained that he thought the land belonged to Revere and that Mr Shakespeare was the caretaker. He also said he thought the land was government land. However, he admitted that it was to the same Mr Shakespeare that he went to get assistance to get water and electricity in the enclosed space he occupied, to discuss the respondent's possession of the land, and to discuss a settlement with regard to his continued occupation of the land.

[112] Although the 2nd appellant claimed that he was in possession of all the land, having planted fruit trees and reared animals on the land, as did his father before him, there was no evidence that he sought to enclose any other portion of the land, even to keep the animals in, protect his fruit trees or secure the premises, at any time. There was no evidence of him reaping any fruit or provisions from the land. The 2nd appellant made several admissions. He admitted that since the land was purchased, Shirley Brown had been keeping crusades on the property up to 2016, that he had done nothing about that activity and that he had paid no taxes on the land. As for what he said he had planted on

the land, he spoke of one ackee tree behind the area where the garage used to be, and two coconut trees inside the enclosed area.

[113] The appellants called witnesses in support of their case. The evidence from Norman Bailey was that he knew the place where the appellants operated their business. He knew it from 1970 when the appellants' father, Mr C Edwards, operated a mechanic shop there. He also saw Mr C Edwards planting crops there. The appellants operated within the fenced area. The operation of the garage and the farming took place in the fenced area. He was unable to say what took place beyond the fenced area. He said that Mr C Edwards was on the land for over three years. He knew of the operation of the shop from 1970 to 1971 and it was operated by the 2nd appellant. At the same time, Revere was still in operation until the late 1970's. At that time, he was in his teens.

[114] Barry Stewart gave evidence that he was born in 1969 and came to know the land when he was eight or nine years old. When he first knew the land, Mr C Edwards was doing auto mechanic work and farming there. He played on the property with the 2nd appellant. He spent about five years learning the trade with the appellant's father in his early teens, from he was about 14 to 16 years old. At that time, Mr C Edwards was in charge of running the shop. He helped the 2nd appellant to secure the shop area. He said after Mr C Edwards died, the 2nd appellant took over the property in the 1980s. He did not know when Mr C Edwards died, but said the 2nd appellant took over the property from his father in the 1980s. The 2nd appellant farmed all over the land from the 1980s. He did not know if Uriah Hanson had ever occupied the land, but Uriah Hanson's grandson did auto mechanic work on the land with the 2nd appellant. The auto mechanic work was done behind the shop. He did not know how Mr C Edwards came to be on the land and he did not know how the 2nd appellant came to be on the land, but he knew that the 2nd appellant had taken over from his father. He knew that after Mr C Edwards left the property he did auto mechanic work at his home. He also knew that Jeffrey Brown and Geoffrey Montague farmed the land from 2000, and that Jeffrey Brown lived on the land even though he did not know how Jeffrey Brown came to be there.

[115] The Judge of the Parish Court rejected their evidence as unreliable. She found that Mr Bailey was not a reliable witness, as his evidence was inconsistent with that of the 2nd appellant in material respects. For instance, the 2nd appellant did not say that he operated a shop in the 1970's, and he could not have, as he was a child at that time. Further, the 2nd appellant had said that he, and his father before him, had farmed the entire land, but Mr Bailey's evidence was that they had only farmed within the fenced area. The Judge of the Parish Court also found aspects of Mr Stewart's evidence not credible.

[116] The 2nd appellant's evidence as to his knowledge of the ownership and his possession of all the land was, at best, not credible. The evidence as regards the 1st appellant's possession of the property was non-existent. There was no evidence as to when she entered the land to possess it. The 2nd appellant said he operated his shop alone in the 1980s. The evidence is that the 1st appellant is part owner of the businesses which are now operated on the land, that is, the bakery and the bag juice factory. There was no evidence of when those businesses began. The 1st appellant ran the businesses after the 2nd appellant left the property and went away to live and work elsewhere. The 2nd appellant's evidence, at the time of the trial, was that he was away from the businesses and the property for seven years. The 1st appellant's interest, therefore, seemed to be only in the businesses and not the land. The 2nd appellant almost admitted as much when he indicated that he had applied to be joined to the suit because the 1st appellant represented the businesses and he was the one who had erected the structures.

[117] The evidence is that the 2nd appellant worked at "Appleton", lived in Santa Cruz, and was mostly to be found in Kingston and Saint Thomas. There was no evidence that the 1st appellant ever took possession of the land or did any acts with an intention to possess the land. The evidence of the 2nd appellant was that his sister is married and had set up her home next door to the property. She lived next door to the property for over 10 years with her husband and family. Her workers also lived next door the business on Uriah McKnight's property. The three vans which were part of the business were parked at her home next door, and not on the over three and one half acre of land bought by

the respondent. No attempt was made, by either appellant, to enclose a further portion of the land to secure the vans there. There was no evidence of the 1st appellant possessing the land to the exclusion of anyone, and she did not appear as being in possession, in the narrative, at any period which could qualify under the Limitation Act, or at all.

[118] The 2nd appellant admitted that he was furnished with documents to access electricity and water to the business by Mr Shakespeare, and also that he had settlement talks with Mr Shakespeare about being on the land after the respondent purchased the land. Although the 2nd appellant admitted to having settlement discussions with Mr Shakespeare and Shirley Brown but that he wanted the settlement to be laid before the court, Mr Shakespeare died in 2010, two years before the plaint was lodged.

[119] The 2nd appellant's admission that Mr Shakespeare assisted him to get electricity and water to his business at his request, in my view, showed that, at that time, the 2nd appellant was, at most, a licensee on the property. Although the 2nd appellant claimed he did not know of Mr Shakespeare's ownership, it was Mr Shakespeare to whom he went when he needed water and light to his premises. It was Mr Shakespeare to whom he went to discuss issues regarding the land and a settlement with Shirley Brown, after the property was bought by the respondent. Furthermore, in my view, his further evidence that the area where the business was located was enclosed for security reasons, as the shop had been broken into before, could not provide support for any supposition that he had an intention to possess the land in his own right, to the exclusion of anyone else, or to dispossess the paper title owner.

[120] Furthermore, it is clear from the 2nd appellant's own account that he did not dispossess Mr Shakespeare of any portion of the property, as even if Mr Shakespeare was only a caretaker, as the 2nd appellant claimed he believed to be the case, the paper title owner would have retained possession and control of the land through the possession and occupation of his caretaker. The 2nd appellant's evidence was that he thought him a caretaker because he "moved around and controlled the area where the iron was and

monitored the old factory". Mr Shakespeare, therefore, did acts to show possession and control of the property to the full knowledge of the 2nd appellant.

[121] The 2nd appellant denied getting notice from Mr Shakespeare and denied knowing of the survey, although the 1st appellant lived next door to the land on the adjoining property, belonging to the McKnights, and persons had come milling on the land near to where their businesses were situated when the survey was being conducted. The businesses were also in operation at the time of the survey. All the adjoining owners or occupiers were served notice of the survey, in addition to Mr Shakespeare. Mr Barry McKnight, an adjoining neighbour was one of the persons given notice, and who was present at the survey. The 2nd appellant also denied the suggestion that he had asked Mr Shakespeare to sell him the spot on which the businesses were situated. It is also noteworthy that the structures built in the ensuing years, in which the businesses operated, were all board structures built on concrete foundations which could not be considered to be permanent structures.

[122] As to the evidence regarding the 2nd appellant's attitude when the respondent took possession of the land, he only said that he was not in any confrontation with anyone'. According to him "[t]hey come around and lots of tickle and taunt and they tried to occupy the area that we already occupied and we go to the station and they say I have no paper to stop them". To my mind, this is a clear admission from the 2nd appellant that he only occupied the two squares on the land.

[123] The 2nd appellant admitted that the respondent's two agents were on the land since the year 2000, living and farming, but he did not confront them as trespassers. He said he would not confront anyone. So although the 2nd appellant was claiming adverse possession of all the land, here is an admission that he was not in possession or occupation of all the land, and that he was certainly not in exclusive possession of it. He also admitted that he never surveyed the property and that he thought the land belonged to the Government.

[124] The only structure the 2nd appellant claimed to use on the property outside of the enclosure was a bathroom close to the enclosure, which he said he did not use after 2005 because the toilet bowls had been removed by the respondent's agents. But he did nothing about the removal. That same washroom facility was renovated and expanded by Shirley Brown for use in the crusades he held on the property, which the 2nd appellant also did nothing about. The clear inference is that the 2nd appellant was not in possession of that area of the land. He said he had farmed a "ground" on the land, but because of the harassment, he just "relaxed". I take this to mean he abandoned the "ground". He said he applied to join the suit because the 1st appellant represented the business but he was the one who did the infrastructure. This seems to me to suggest that their interest was in the businesses and the infrastructure within which they were operated, and not the land.

[125] Although the 2nd appellant claimed his father had occupied the land from the 1970s, he could not say how his father came to be on the land. It was Uriah Hanson's land, he said, and his father took over after Mr Hanson had left. The 2nd appellant said it was three and a half acres that his father farmed, and that he also farmed it after his father left. His father, he said, had acquired the land by adverse possession by doing auto mechanic work and farming on it. The 2nd appellant was not able to say when his father left the land, or why, but he did admit that his father had bought a piece of land elsewhere, on which he built his home and lived with his wife, and on which his father, his wife and a deceased son are buried.

[126] What the Judge of the Parish Court did find as a fact, was that the property was bought from Revere by SV Shakespeare Enterprises in 1989, and that there was no evidence that Mr C Edwards, the appellants' father, however he came to be on the land, had dispossessed Revere or SV Shakespeare Enterprises (through its principal Mr Shakespeare) of the land, or extinguished their titles thereto. In fact, the evidence showed that Mr C Edwards was not on the land long enough in the 1970s to dispossess Revere, nor was he on the land in the 1980s, when SV Shakespeare Enterprises acquired

the land, in order to extinguish its title. That is a finding the Judge of the Parish Court was entitled to make on the evidence.

[127] Howsoever the 2nd appellant came to be on the land in the 1980s, it is clear from the evidence that, up to 1996, he was there with the permission of Mr Shakespeare, the owner of SV Shakespeare Enterprises, the paper title owner. The inescapable inference to be drawn from the evidence is that the permission was to conduct business on a small portion of the land at the front of the property near the guard house. Despite the evidence of the 2nd appellant that he had occupied all the land, that was a patent deceit unsupported by a scintilla of evidence. When the respondent took possession of the land and her agents began clearing and farming the land, the 2nd appellant did not indicate to the respondent, or her agents, that he was in possession of the land, pointing out his trees and crops. Instead, he said he did nothing as "he was not in confrontation with anyone". He did not fence the property, he paid no taxes, he reaped no crops, and he reared no animals. He evinced no intention to possess the property to the exclusion of anyone. Neither appellant could show factually that they were in exclusive possession of all the land at any point in time. There was a playground on the property where the respondent's son organized football competitions for young people, and Shirley Brown organised what was described as "massive church crusades" on the property, in full sight and with the full knowledge of the 2nd appellant. The appellants were, therefore, unable to show that the respondent was not in possession of the land.

[128] The Judge of the Parish Court was, therefore, correct, when she found that the appellants were licensees during the period under the ownership of SV Shakespeare Enterprises. Although the finding was in relation to both appellants, nothing in the evidential narrative indicates that the 1st appellant was on the land during the ownership of SV Shakespeare Enterprises. Nevertheless, to the extent that she may have been, her position would have been no different from that of the 2nd appellant. The Judge of the Parish Court was also entitled to find that the appellants were not in open exclusive possession of the land during the ownership of SV Shakespeare Enterprises and that they

were there with permission. The Judge of the Parish Court was also correct to find that the appellants were also not in open exclusive possession of the three and a half acres of land bought by the respondent in 1999.

[129] The Judge of the Parish Court did not consider whether the possession of the "two squares", which the 2nd appellant said he had occupied for 13 years, was occupied with the permission of the respondent. The evidence on both sides is that the families were friends and neither of the respondent's two brothers, nor her husband, did anything to evict the appellants from that enclosed space. The 2nd appellant denied the suggestion that he had been given permission to remain on the "two squares" by the respondent's husband. There was some evidence of accommodation given to the appellants in their occupation of the area. There was evidence that, in 2006, the respondent's brother gave permission to the 2nd appellant to dig a pit for the toilet outside of the enclosed area, to comply with the public health requirement to operate the restaurant in the enclosed space.

[130] As submitted by counsel for the respondent, a determination would also have had to have been made as to when the license given by Mr Shakespeare to operate in that area had come to an end, in order to determine when time would have begun to run against the respondent. The Judge of the Parish Court did not think it necessary to make any such determination, and based on how the appellants' case was conducted, she cannot be faulted.

[131] At the start of the trial before the Judge of the Parish Court, the attorney for the respondent asked the attorney for the appellants to clarify whether the appellants were claiming adverse possession of all the land or only of the two squares on which the businesses were operated. Counsel for the appellants did not respond and the case proceeded as having a special defence of adverse possession in respect of all the land. The appellants' case, therefore, was not that they had dispossessed the respondent of the two squares that they had enclosed, but that the paper title owner had been dispossessed of all that parcel of land from the 1970s, by their father Mr C Edwards,

when the 2nd appellant was a child, and that they had been in adverse possession ever since that time. This was the case the Judge of the Parish Court was asked to determine. The defence, as stated, was unsupported by any credible narrative before the Judge of the Parish Court, capable of giving rise to a finding that there was any *bona fide* dispute which called the respondent's title into question.

[132] The mere statement of a defence of adverse possession is insufficient to oust the jurisdiction of the court. The court must determine whether there is sufficient evidence, from a credible narrative, that would call into question the title of the plaintiff. The 2nd appellant made several admissions which indicated that he was a mere licensee to Mr Shakespeare. The appellants were unable to show that they were in exclusive possession of the three and a half acres of land at any point during their occupation of the enclosed portion of the land. There was no credible narrative of factual possession coupled with the intention to possess to the exclusion of all others, as the law requires (see **JA Pye (Oxford) Ltd and another** citing Slade J in **Powell v McFarlane**; see also **Mendoza Nembhard v Rafel Levy** [2014] JMCA Civ 49).

[133] The respondent entered into possession at a time when the appellants were licensees to her predecessor in title. She took possession of the entire land short of the two squares on which the appellants did their business. At no point during the respondent's possession did the appellants ever carry out any act of possession of that portion of the land or assert any right to such possession. The respondent's possession was not ousted, and her title to the land was not extinguished by any adverse possession in the appellants. They have not been able to show actual possession of all the land to the exclusion of the appellant, sufficient to ground their claim of title in adverse possession.

[134] Many things were said in evidence by the 2nd appellant. One would be tempted to believe, that as a result of all that was said on the appellants' case there must have been a dispute as to title. However, under section 89, once there is proof of the plaintiff's title, if the defendant has no right nor title to the property, then the plaintiff is entitled to

recover possession. For section 96 to become relevant, there must be a dispute which raises a real and substantial question as to who is in possession and to whom the property belongs. In this case, the dispute involved an equitable owner in possession, and a licensee holding over in possession of only a portion of the land but who was claiming all of it. The Judge of the Parish Court having decided to hear so much of the evidence as would indicate whether she had jurisdiction, was within her right to find that there was no credible narrative to sustain a claim of adverse possession of all the land. There was, therefore, no dispute as to title to the land. At no point could the Judge of the Parish Court have determined that the enclosing of two squares of land for security reasons could be evidence of an intention to possess all the land, in the absence of any evidence of exclusive possession of all the land being claimed by the appellants. There was, therefore, no valid dispute as to title.

[135] The appellant relied on **Pringle v Morgan**, where this court held that the Judge of the Parish Court was in error in giving judgment for the plaintiff in a case for recovery of possession because there was a dispute as to title and there was no evidence of the annual value of the property. However, in that case, the dispute was that the plaintiff, who was the sister of one of the defendants, had no title that was greater than that of the defendants. In **Smith v Pinnock**, the respondent claimed to have been in exclusive possession of the property for upwards of 18 years as against the paper owner, and filed a counterclaim to the appellant's claim for trespass, as well as a request for an injunction. The court found that the state of the pleadings was such that it showed that there was a genuine dispute as to title.

[136] In this case, the respondent proved her title to the land. The appellants could not show cause to the contrary. Apart from the appellants' statement of defence, there were no pleadings or credible evidence to support the appellants' claim that they were in actual possession of all the land bought by the respondent, before or after her purchase. Therefore, there was no basis to find that their possession of the land could have been adverse to that of the respondent. The Judge of the Parish Court was correct to conclude

that there was no credible narrative before her calling into question the title of the respondent. The annual value, though stated, was therefore, irrelevant to the claim for recovery of possession.

[137] The Judge of the Parish Court was correct and there is no merit in these grounds.

Issue 3: Whether the Judge of the Parish Court erred in finding that the appellants could not have been adverse possessors as their initial entry had been with consent (ground 3)

The submissions

[138] In respect of this issue, counsel for the appellants submitted that the finding made by the Judge of the Parish Court that the 2nd appellant's father's initial entry onto the land was not done in trespass, but by consent, and her conclusion that, as a consequence, the appellants could not be adverse possessors, was not supported by the evidence.

[139] Counsel for the respondent, however, outlined several pieces of evidence to refute the contention that there was no evidence to support the Judge's finding that the 2nd appellant and his father had entered the land as licensees. These include the following:

i. the land was initially registered to Revere Jamaica Alumina Limited, then transferred to S V Shakespeare Enterprises Limited on 17 July 1989, and then sections 3 and 6 of the land further transferred to S V Shakespeare on 24 September 1995;

ii. in 1996, the 2nd appellant sought and obtained the assistance of Mr Shakespeare, to get a supply of utilities to the land he occupied;

iii. the period between 1989 and 1996 was a period less than what would have been required to bar Mr Shakespeare's interest pursuant to the limitation period; and

iv. the 2nd appellant gave evidence that he had thought Mr Shakespeare was the caretaker of the land, which amounted to a concession that Mr Shakespeare was in occupation/possession of the land.

Discussion and disposal of issue 3

[140] The Judge of the Parish Court, in her determination as to how the appellants came to be on the land, said this:

> "59. Before Mr. Edwards took possession in the 1980s, he could not have had exclusive sole possession as he had been working with his father. It was not then a possession in his own right and for his own benefit. Also, his father got permission to be on the land and would have been a licensee. He did not gain adverse possession against the owners. Furthermore, in 1989 when Mr. Shakespeare purchased the property from Revere time again would've started to run against the defendant.
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> 60. The court accepts that Mr. Edwards was in possession from the 1980's. However, he (and his father also from the 1970s) was a licensee up to the time of the 1999 purchase and could not have gained adverse possession against the Plaintiff's predecessor in title."

[141] Contrary to the submissions made by the appellants' counsel, there was more than sufficient evidence, if accepted as true, that would have supported the conclusion of the Judge of the Parish Court.

[142] Revere Jamaica Alumina Limited became the registered owner of over 628 acres of lands in 1970. The lands were transferred by Revere in 1989 to SV Shakespeare Enterprises by transfer No. 483568, endorsed on the title. Two separate portions of the land, sections 3 and 6, were transferred to Mr Shakespeare in 1995 by Miscellaneous Instrument No 756110 and two separate splinter titles were issued at Volume 1263 Folio 857 and Volume 1263 Folio 858. Certainly, the 2nd appellant's entry on the land in the 1980s as he claimed, would have coincided with the acquisition of the land by SV Shakespeare Enterprises.

[143] Although the 2nd appellant claimed he was on the land from the 1970s, he admitted he did not know how his father came to be on the land, as he only grew up seeing him there. There was evidence that Uriah Hanson was living there, having been relocated there by Revere. Although the 2nd appellant claimed that his father went on the land after Uriah Hanson had left, 80-year-old Wesley Stewart gave evidence that he was present when Uriah Hanson gave Mr C Edwards permission to operate a garage on a portion of the land. There was evidence that he did so whilst Uriah Hanson was still on the land. Mr C Edwards stayed on the land for about two to three years, then he left and carried on his auto mechanic work elsewhere. Uriah Hanson stayed on the land for about four years and was then relocated. It was a matter for the Judge of the Parish Court whose version of the events she accepted. There was no evidence to dispute Mr Stewart's account, nor was he discredited. It was, indeed, a matter of fact for the Judge of the Parish Court to find that Mr C Edwards had been on the land for a period during the 1970s as a licensee, and that he did not obtain adverse possession of the land during that period.

[144] The evidence from the 2nd appellant himself is that he was a child during this period and, although he claimed to have grown up on the land, there is no evidence that he, his father or any member of his family had ever lived on the land. The appellants' case was that the 2nd appellant was a schoolboy at the time his father occupied the land and he would go on the land after school to give water to the cows. Therefore, the finding of the Judge of the Parish Court that the 2nd appellant could not have been in possession of the land in his own right in the 1970s is unassailable.

[145] After the 2nd appellant graduated, he too started doing auto mechanic work on the land in the 1980s. He later began operating the shop. The Judge of the Parish Court found as a fact that the 2nd appellant was in possession in the 1980s. Although there was no evidence as to how the 2nd appellant had returned to the land in the 1980s, or when in the 1980s he did so, there was evidence that after SV Shakespeare Enterprises acquired the land in 1989, the 2nd appellant's occupation continued with Mr Shakespeare's permission. Mr Shakespeare was the principal of SV Shakespeare Enterprises. There was

no dispute as to that fact. The 2nd appellant admitted that he had acquired water and electricity to the land with Mr Shakespeare's help in 1996. Mr Shakespeare provided the necessary documentation for him to get water and electricity supplied to the businesses. He admitted that he and Mr Shakespeare had talked about his occupation of the land about two times.

[146] The 2nd appellant acquired electricity to the businesses in May 1997. The water bills tendered in evidence for October 1996, November 1997, January 1998 and March 2000 by the 2nd appellant, showed the service address as that of Mr Shirley Shakespeare at Vauxhall Maggotty and that address as the mailing address of the 2nd appellant. That alone cast serious doubts on the 2nd appellant's claim that he thought the land was owned by Revere and the Government and that Mr Shakespeare was a caretaker.

[147] The Judge of the Parish Court found that the 2nd appellant was on the land with the permission of the owner. In my view there was sufficient evidence to support such a finding.

[148] The 2nd appellant admitted that he had enclosed the area he operated the businesses from for security reasons as the shop had been broken into. The clear inference to be drawn is that the 2nd appellant was operating his businesses on the two squares of the land with the permission of Mr Shakespeare and had enclosed it to prevent theft and not with any intention to dispossess Mr Shakespeare of that portion of the land.

[149] Based on the evidence, Mr C Edward's possession of the land along with the permission of Uriah Hanson, could not have extinguished the title of Revere in the 1970s. Even if the Judge of the Parish Court was wrong to find that Mr C Edwards had occupied the property with the permission of Uriah Hanson, his possession was not within the statutory period for him to claim adverse possession against the true owner. Mr C Edwards left the land and set up his garage and home elsewhere. The 2nd appellant could not have extinguished the title of Revere in the 1980s when he reappeared on the land up to the time of the transfer in 1989 to SV Shakespeare Enterprises. Neither could he

have extinguished the title of SV Shakespeare Enterprises between 1989 and 1999. SV Shakespeare Enterprises was owned by Mr Shakespeare. The 2nd appellant acknowledged the possession of the land by Mr Shakespeare, albeit he claimed he thought that he was the caretaker of the land. It is not clear on what basis he believed that a caretaker was in a position to provide him with documents to have water and electricity taken out for his business but the name and service address on the water bill give lie to his assertions of ignorance as to ownership.

[150] This ground is without merit.

Issue 4 - Whether the land was sufficiently identified as the respondent's land

The submissions

[151] In respect of ground 4, it was submitted that the parcel of land in dispute was not sufficiently identified to meet the *prima facie* evidential requirement necessary to create a valid sale of land. This failure, it was argued, would have also "irredeemably and fatally affected the evidence required to determine the annual value for the purposes of jurisdiction". The case of **Clark v Notice** [2021] JMSC Civ 12, at page 14, was relied on.

[152] The respondent, on the other hand, submitted that the receipt tendered as exhibit 8, identified the land referable to a "lot 16", as found by the Judge of the Parish Court, and refuted the contention, in ground 4, that the receipt referred to a "lot 4".

[153] It was also pointed out that the Judge of the Parish Court accepted the evidence of the land surveyor, who she found to be credible, that Mr Shakespeare was present when the land was being surveyed, and that he had told the surveyor that the land was purchased by Kathleen Brown. The latter statement, it was submitted, would have been admissible as a declaration by Mr Shakespeare against his own interest. It was similarly submitted that the evidence of the widow of the respondent's brother that her husband had told her he had purchased the land for his sister, would have been admissible as evidence of a statement made by the respondent's brother against his interest.

Discussion and disposal of issue 4

[154] The respondent bought land part of that which was owned by S V Shakespeare Enterprises from Shirley Shakespeare. The land is bordered by lands belonging to S V Shakespeare Enterprises and lands occupied by the McKnights. According to the surveyor, who surveyed the land at the request of the respondent, there was a subdivision plan for the property. The area bought by the respondent was assigned lot 16.

[155] The respondent's brother received a receipt, which was a memorandum in writing, stating that the sale to him was for "lot 16" which comprised "3 Acres 3R 17.4P" for US$35,000.00. This was the portion of land the surveyor, contracted by the respondent to do the survey, confirmed that he surveyed, and which Mr Shakespeare had told him had been sold to Kathleen Brown. Mr Shakespeare, who it was said was the principal of SV Shakespeare Enterprises and who had also taken ownership of a part of land which had been transferred from the same property, had been present at the survey. As the person who had sold the land, he would have been in the best position to identify the land that he sold to the respondent. A similar approach was taken by this court, per Harris JA, in the case of **Donald Cunningham and others v Howard Berry and others** [2012] JMCA Civ 34, where at para. [10] of the judgment, Harris JA approved the decision of the magistrate in her finding that, although there had been an error in the reference to the surveyor as to the Folio number of the property, all the plaintiffs and almost all the defendants had been present at the survey, and no one had objected that the wrong parcel was being surveyed. Furthermore, the error was corrected by the surveyor in his report. Harris JA found therefore, that the magistrate was correct to find that the property in question had been properly identified.

[156] The 2nd appellant who was claiming he had been in possession of all the land, did not dispute that this was the same land the respondent was claiming. The 2nd appellant also claimed that he had spoken with both Mr Shakespeare and the respondent's brother who had purchased the land on her behalf, regarding the land. There was no assertion that he occupied a portion different from that being claimed by the respondent. All the

parties spoke to the land, the location, the occupiers and even the buildings and remnants of buildings on the land, including the guard house at the front, the washroom, the old servant's quarters and the wooden structures built by the 2nd appellant, which he enclosed.

[157] This ground has no merit.

Conclusion

[158] The principles governing the approach an appellate court is to take regarding decisions made by first instance courts on factual issues are now well known (see **Watt or Thomas v Thomas** [1947] AC 484, at pages 487 and 488, as well as the affirmation of those principles by the Privy Council in **Industrial Chemical Co (JA) LTD. v Owen Ellis** (1986) 23 JLR 35, at page 39). The findings made by the Judge of the Parish Court were mostly findings of fact which were all supported by evidence led before her. I see no basis upon which to disturb those findings. To the extent that the Judge of the Parish Court made any minor errors in her assessment of the evidence, it did not affect the overall decision in the case, which was the correct one, and which did justice between the parties. I would, therefore, advise that the appeal be dismissed with costs to the respondent to be taxed if not agreed.

DUNBAR-GREEN JA

[159] I have read, in draft, the judgment of my learned sister. I agree with her reasoning and conclusion.

BROOKS P

ORDER

The appeal is dismissed with costs to the respondent in the sum of $100,000.00.